

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
FILED
DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 07 2003

SAMUEL S. LOPEZ,

Plaintiff,

v.

BERNALILLO COUNTY
SHERIFF'S DEPARTMENT, et al.,

Defendants.

No. CIV-03-0031 JP/LCS

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* to review Plaintiff's civil rights complaint under 28 U.S.C. § 1915(e)(2) and Fed.R.Civ.P. 12(b)(6). Plaintiff is incarcerated, appearing pro se, and proceeding in forma pauperis. For the reasons below, Plaintiff's complaint will be dismissed.

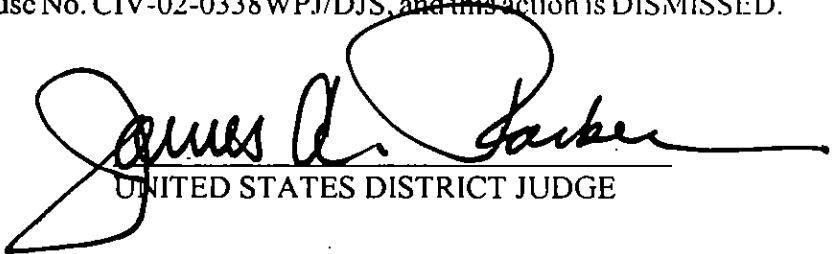
The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under §1915(e)(2) "at any time if the action . . . is frivolous or malicious; [or] fails to state a claim upon which relief may be granted." The Court also may dismiss a complaint *sua sponte* under Fed.R.Civ.P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991) (quoting *McKinney v. Oklahoma Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

The complaint alleges that Plaintiff was arrested and detained on false charges of conspiracy

to commit armed robbery and aggravated assault. Approximately eight months later, the charges were dismissed for lack of evidence. Plaintiff's probation was "corrected," although he remains incarcerated. Plaintiff asserts claims for false arrest and imprisonment. He seeks damages and certain equitable relief.

Plaintiff previously filed a complaint arising from the events complained of here and naming all the Defendants named in the instant complaint. *See Lopez v. Bernalillo County Sheriff's Department*, No. CIV-02-0338 WPJ/DJS. In the earlier complaint, Plaintiff sought a rehearing of his parole revocation and damages. His equitable claims were dismissed without prejudice to his right to assert claims in habeas corpus; the damages claims were dismissed without prejudice under the rule announced in *Heck v. Humphrey*, 512 U.S. 477 (1994). The instant claims were, or could have been, brought in the former complaint and are thus barred under the doctrine of res judicata. *Plotner v. AT & T Corp.*, 224 F.3d 1161, 1168 (10th Cir. 2000); *Overton v. United States*, No. 01-6357, 2002 WL 31230837, at **5 (10th Cir. Oct. 4, 2002). The complaint will be dismissed.

IT IS THEREFORE ORDERED that Plaintiff's complaint is DISMISSED on the same terms and conditions as the complaint in cause No. CIV-02-0338WPJ/DJS, and this action is DISMISSED.


UNITED STATES DISTRICT JUDGE